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November 18, 2019

VIA EMAIL

Joseph A. Bugni
Federal Defender Services of Wisconsin, Inc.
22 East Mifflin Street
Suite 1000
Madison, WI 53703

Re: Government's Expert Witness Notice in United States v. Kriemelmeyer (3:19-CR-90)

Dear Attorney Bugni:

Pursuant to your request and the Court's order, the purpose of this letter is to provide notice pursuant to Rule 16(a)(1)(G) of the government's intent to use expert testimony during its case-in-chief at trial. The government intends to call IRS Revenue Agent Eric Nuenthel to testify as an expert in this case. Revenue Agent Nuenthel's resume is attached to this letter.

The Federal Rules of Evidence authorize the use of an expert witness if it "will help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702. The use of an expert witness in criminal tax prosecutions has been consistently approved. *See, e.g., United States v. Beall*, 970 F.2d 343, 347-348 (7th Cir. 1992); *see also* Criminal Tax Manual § 40.03[9][b] (collecting cases). Such an IRS expert summary witness may summarize evidence for purposes of tax analysis. *United States v. Windfelder*, 790 F.2d 576, 581-82 (7th Cir. 1986); *United States v. Marchini*, 797 F.2d 759, 765-66 (9th Cir. 1986).

As is common in tax cases, near the end of its case-in-chief, the government intends to call such a summary expert witness trained in taxation and accounting. This witness, IRS Revenue Agent Eric C. Nuenthel, will provide an analysis of the financial records introduced into evidence and explain the tax consequences of the Government's evidence. Specifically, Revenue Agent Nuenthel will testify to the tax implications of the conduct charged in the indictment, as well as to other pertinent evidence presented

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in the course of the trial. Revenue Agent Nuenthel will also testify to the various IRS forms involved in this case, including their intended and proper use.

Through Revenue Agent Nuenthel, the Government will offer into evidence summary schedules reflecting the Government's evidence and summaries of voluminous records under Federal Rule of Evidence 1006. The schedules will be prepared based on admissible evidence. Courts have regularly approved the use of such charts. *See, e.g., United States v. Gardner*, 611 F.2d 770, 776 (9th Cir. 1980).

The summary schedules, because they will depend on evidence that is admitted at trial, by necessity will not be finalized until shortly before the summary witness's testimony. Copies of the summary schedules will be provided to you and the Court shortly before the testimony. Draft summaries of tax and financial calculations have already been provided to you at bates range KRIEMELMEYER_SAREXHIBITS-000028 through -000036 and KRIEMELMEYER_SAREXHIBITS-001031 through -001113. The underlying financial records and other documentary evidence that the government anticipates will be used in creating the ultimate summary schedules at trial are being provided or made available to you in discovery.

Should unforeseen events arise between now and the date of trial that require different expert testimony and/or change the current trial date, the Government reserves the right to seek to introduce testimony of additional experts.

Very truly yours,

SCOTT C. BLADER
United States Attorney

By: /s/
ELIZABETH ALTMAN
Assistant United States Attorney

By: /s/
ERIC C. SCHMALE
Trial Attorney